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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/583,096
Confirmation No.	:	1266
Applicant	:	Lopatin
Filed	:	June 19, 2006
Title	:	Method and Apparatus for Manufacturing a Measuring Device for Determining and/or Monitoring a Process Variable and Measuring Device
TC/A.U.	:	2856
Examiner	:	D.A.Rogers
Docket No.	:	LOPA3009/FJD
Customer No.	:	23364

RESPONSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action of September 25, 2008, in which the examiner has required an election of either claim 11 (Group I), or claims 12 - 14 (Group II), or claims 15 - 20 (Group III), for prosecution in this application, applicant provisionally elects claim 11 (Group I) for prosecution.

This election is made with traverse.

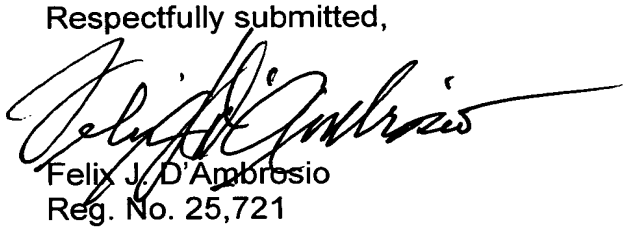
First it is noted that unity of invention was not an issue during the international proceeding of this application. Typically, this is an indicator that restriction during the U.S. prosecution is not proper. It is respectfully submitted that the examiner is misreading PCT Rules 13.1 and 13.2. In his discussion of PCT Rule 13.2 the examiner suggests, basically, that Group I and Group II are different because there is a recitation of "means" in the Group II claims but not in the Group I claim. Group I is directed to a method, while Group II is directed to apparatus. Accordingly, one would not expect the "means" recitation to be present in Group I. That, however, is not the inquiry. The inquiry under PCT Rule 13.2 focuses on the "contribution which each of the claimed invention, considered as a whole, makes over the prior art."

When this test is applied, one must conclude that the contributions are the same so that restriction is not proper. Note also, 37 CFR 1.475(b) which specifically states that : "An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories: (1) A product and a process specially adapted for the manufacture of said product....." This provision should be sufficient to preclude a restriction requirement in this case.

The examiner is urged to reconsider his position and proceed to examine claims 12 - 20 along with claim 11.

Submitted herewith are four (4) substitute sheets of drawings as requested by the examiner.

Respectfully submitted,



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